

DECISIONS PER CURIAM, ETC., FROM APRIL 12,
1937, THROUGH JUNE 1, 1937.*

No. 875. *ESPENLAUB v. INDIANA*. Appeal from the Supreme Court of Indiana. Jurisdictional statement distributed April 17, 1937. Decided April 26, 1937. *Per Curiam*: The motion of the appellee to dismiss the appeal is granted, and the appeal is dismissed for the want of a substantial federal question. *Evanston v. Gunn*, 99 U. S. 660, 667, 668; *Baltimore & Ohio R. Co. v. Mackey*, 157 U. S. 72, 87; *Equitable Life Assurance Society v. Brown*, 187 U. S. 308, 311. *Mr. Clyde H. Jones* for appellant. *Mr. Urban C. Stover* for appellee. Reported below: 2 N. E. (2d) 979.

No. —, original. *EX PARTE HIRAM STEELMAN*. April 26, 1937. The motion for leave to file petition for writ of prohibition or mandamus is denied. *Ex parte United States*, 287 U. S. 241, 248, 249.

No. 625. *FOX, STATE TAX COMMISSIONER OF WEST VIRGINIA, v. DRAVO CONTRACTING Co.* April 26, 1937. Ernest K. James, successor in office to Fred L. Fox, as State Tax Commissioner, substituted as the party appellant on motion of *Mr. Clarence W. Meadows* for the appellant.

No. 906. *CATHOLIC ORDER OF FORESTERS, INC., v. NORTH DAKOTA*. Appeal from the Supreme Court of North Dakota. Jurisdictional statement distributed April 24, 1937. Decided May 3, 1937. *Per Curiam*: The appeal

* For decisions on applications for certiorari, see *post*, pp. 673; 681; for rehearing, *post*, p. 712.

herein is dismissed for the want of jurisdiction. Section 237(a) Judicial Code, as amended by the Act of February 13, 1925 (43 Stat. 936, 937). Treating the papers whereon the appeal was allowed as a petition for a writ of certiorari, as required by § 237 (c), Judicial Code, as amended (43 Stat. 936, 938), certiorari is denied. *Mr. Howard G. Fuller* for appellant. *Messrs. P. O. Sathre and Francis Murphy* for appellee. Reported below: 67 N. D. —; 271 N. W. 670.

No. —. *IN RE PAYSOFF TINKOFF*. May 3, 1937. The motion for leave to file complaint is denied.

No. —, original. *EX PARTE JOHN BROWN*. May 3, 1937. The motion for leave to file petition for writ of habeas corpus is denied.

No. 342. *PETERSON v. UNITED STATES*. May 3, 1937. The motion for leave to file petition for rehearing is granted. The petition for rehearing is denied.

No. 502. *UNITED STATES SAVINGS BANK ET AL. v. MORGENTHAU, SECRETARY OF THE TREASURY, ET AL.* May 3, 1937. The motion for leave to file petition for rehearing is granted. The petition for rehearing is denied.

No. 11, original. *ARKANSAS v. TENNESSEE*. May 17, 1937. The motion for the appointment of a Special Master is granted, and Monte M. Lemann, Esquire, of New Orleans, Louisiana, is appointed Special Master.

301 U. S.

Decisions Per Curiam, Etc.

NO. 807. UNITED GAS PUBLIC SERVICE CO. v. TEXAS ET AL. Appeal from the Court of Civil Appeals, Third Supreme Judicial District, of Texas. May 17, 1937. The motion of the appellee to dismiss the appeal is denied. *Norfolk Turnpike Co. v. Virginia*, 225 U. S. 264, 269; *Second National Bank v. First National Bank*, 242 U. S. 600, 602; *Western Union v. Priester*, 276 U. S. 252, 258. Messrs. John P. Bullington and F. G. Coates for appellant. Messrs. William McCraw, Alfred M. Scott, and Edward H. Lange for appellees. Reported below: 80 S. W. (2d) 1094.

NO. 938. PAINTER v. OHIO. Appeal from the Supreme Court of Ohio. Jurisdictional statement distributed May 15, 1937. Decided May 24, 1937. *Per Curiam*: The motion of the appellee for leave to file a statement against jurisdiction is granted. The appeal herein is dismissed for the want of a substantial federal question. *Hebert v. Louisiana*, 272 U. S. 312, 315; *Westfall v. United States*, 274 U. S. 256. Messrs. Nugent Dodds, W. H. Boyd, and Ben B. Wickham for appellant. Mr. Frederick W. Green for appellee. Reported below: 132 Oh. St. 302; 7 N. E. (2d) 229.

NO. 944. FEARON v. TREANOR. Appeal from the Supreme Court of New York. Jurisdictional statement distributed May 15, 1937. Decided May 24, 1937. *Per Curiam*: The appeal herein is dismissed for the want of a substantial federal question. *Second Employers' Liability Cases*, 223 U. S. 1, 50; *New York Central R. Co. v. White*, 243 U. S. 188, 198; *Silver v. Silver*, 280 U. S. 117, 122. Mr. Joseph S. Robinson for appellant. No appearance for appellee. Reported below: 272 N. Y. 268; 5 N. E. (2d) 815.

No. 947. *GRUBB v. LAWMAN, RECEIVER*. Appeal from the Supreme Court of Tennessee. Jurisdictional statement distributed May 15, 1937. Decided May 24, 1937. *Per Curiam*: The motion of the appellee to dismiss the appeal is granted, and the appeal is dismissed for the reason that the judgment sought here to be reviewed is based upon a non-federal ground adequate to support it. *DeSaussure v. Gaillard*, 127 U. S. 216, 232, 233; *McCoy v. Shaw*, 277 U. S. 302, 303; *Kammerer v. Kroeger*, 299 U. S. 302, 304. *Messrs. J. B. Sizer and Charles C. Moore* for appellant. *Mr. T. Pope Shepherd* for appellee. Reported below: 170 Tenn. 469.

No. —, original. *EX PARTE CHESTER G. BOLLENBACH*. May 24, 1937. The motion for leave to file a petition for writ of certiorari herein is denied.

No. 13, original. *TEXAS v. FLORIDA ET AL.* May 24, 1937. The answers of the defendants are received and ordered filed.

No. 499. *HARTRIDGE-CANNON CO. ET AL. v. GILLESPIE ET AL.* May 24, 1937. The motion of the State of Florida for leave to file a petition to intervene is granted. The petition to intervene is denied.

No. 922. *WORCESTER COUNTY TRUST CO. v. RILEY*. See *post*, p. 678.

No. 499. *HARTRIDGE-CANNON CO. ET AL. v. GILLESPIE ET AL.* May 24, 1937. The motion for leave to file petition for rehearing is granted. The petition for rehearing is denied.

301 U. S.

Decisions Per Curiam, Etc.

No. 855. GOODMAN LUMBER Co. v. UNITED STATES ET AL. Appeal from the District Court of the United States for the Eastern District of Wisconsin. Jurisdictional statement distributed April 10, 1937. Decided June 1, 1937. *Per Curiam*: The judgment is affirmed. *United States v. American Sheet & Tin Plate Co.*, ante, p. 402. *Mr. John S. Burchmore* for appellant. *Messrs. Daniel W. Knowlton and Nelson Thomas* for appellees.

No. 856. A. O. SMITH CORP. v. UNITED STATES ET AL. Appeal from the District Court of the United States for the Eastern District of Wisconsin. Jurisdictional statement distributed April 10, 1937. Decided June 1, 1937. *Per Curiam*: The judgment is affirmed. *United States v. American Sheet & Tin Plate Co.*, ante, p. 402. *Mr. John S. Burchmore* for appellant. *Messrs. Daniel W. Knowlton and Nelson Thomas* for appellees.

No. 804. RAILROAD COMMISSION OF CALIFORNIA ET AL. v. PACIFIC GAS & ELECTRIC Co. Appeal from the District Court of the United States for the Northern District of California. Jurisdictional statement distributed March 20, 1937. Decided June 1, 1937. *Per Curiam*: The decree is affirmed by an equally divided Court. MR. JUSTICE SUTHERLAND took no part in the consideration or decision of this case. *Mr. Ira H. Rowell* for appellants. *Messrs. Warren Olney, Jr., Allan P. Matthew, and Robert L. Lipman* for appellee. Reported below: 13 F. Supp. 931; 16 *id.* 884.

No. 988. DOLBOW v. NEW JERSEY; and

No. 989. DRISCOLL v. SAME. Appeals from the Court of Errors and Appeals of New Jersey. Jurisdictional statement distributed May 27, 1937. Decided June 1,

1937. *Per Curiam*: The appeals herein are dismissed for the want of a substantial federal question. *Hayes v. Missouri*, 120 U. S. 68, 71; *Brown v. New Jersey*, 175 U. S. 172, 175-177; *Frank v. Mangum*, 237 U. S. 309, 341, 342; *Snyder v. Massachusetts*, 291 U. S. 97, 105. *Mr. John Warren* for appellant in No. 988. *Mr. James Mercer Davis* for appellant in No. 989. No appearance for appellee. Reported below: 117 N. J. L. 560; 189 Atl. 915.

No. 1010. *TEXAS COMPANY ET AL. v. DYER, VEHICLE COMMISSIONER*. Appeal from the Supreme Court of Mississippi. Jurisdictional statement distributed May 29, 1937. Decided June 1, 1937. *Per Curiam*: The appeal herein is dismissed for the want of a substantial federal question. *Missouri Pacific Ry. Co. v. Humes*, 115 U. S. 512, 523; *Western Union v. Indiana*, 165 U. S. 304, 307, 310; *Bankers Trust Co. v. Blodgett*, 260 U. S. 647, 651, 652. *Mr. William H. Watkins* for appellants. No appearance for appellee. Reported below: 174 So. 80.

No. 1019. *GIRAGI ET AL. v. MOORE ET AL.* Appeal from the Supreme Court of Arizona. Jurisdictional statement distributed May 29, 1937. Decided June 1, 1937. *Per Curiam*: The appeal herein is dismissed for the want of a substantial federal question. *Grosjean v. American Press Co.*, 297 U. S. 233, 250; *Associated Press v. National Labor Relations Board*, ante, p. 103. *Messrs. Fred Sutter, Elisha Hanson, and John M. Ross* for appellants. *Mr. Allan K. Perry* for appellees. Reported below: 48 Ariz. 33; 58 P. (2d) 1249; 64 P. (2d) 819.

No. —, original. *EX PARTE ANNIE SHERMAN ET AL.* June 1, 1937. The motion for leave to file a petition for writ of certiorari is denied.

301 U.S.

Decisions Per Curiam, Etc.

No. —, original. *EX PARTE JOSEPH PORESKEY*. June 1, 1937. The motion for leave to file a petition for writ of mandamus is denied.

No. —, original. *EX PARTE HARRY C. ROBERTSON*. June 1, 1937. The motion for leave to file a petition for writ of habeas corpus is denied.

No. 13, original. *TEXAS v. FLORIDA ET AL.* June 1, 1937. The motion for the appointment of a Special Master is granted and John S. Flannery, Esquire, of Washington, D. C., is appointed Special Master.

No. 102 (October Term, 1934). *SMITH, EXECUTOR, v. SNOW ET AL.* June 1, 1937. The motion to recall and amend the mandate is denied. The motion for leave to file a supplemental answer and petition for rehearing in the United States District Court for the District of Minnesota is denied, without prejudice to an application to the District Court which may deal with the matter unaffected by the mandate of this Court.

No. 40. *ATLANTIC REFINING CO. v. VIRGINIA*; and No. 713. *DODGE ET AL. v. BOARD OF EDUCATION OF CHICAGO ET AL.* June 1, 1937. It is ordered that these cases be restored to the docket for reargument.

No. 552. *KELLY, DIRECTOR, ET AL. v. WASHINGTON EX REL. FOSS COMPANY, INC., ET AL.* June 1, 1937. This case is assigned for reargument, with direction to the Clerk to give notice to the Attorney General of the United States who is requested to present the views of the Government upon the question whether Chapter 200 of the

Laws of 1907 of the State of Washington, or the action of the officers of the State thereunder, conflicts with the authority of the United States or with the action of its officers under the Acts of Congress. Briefs may be filed by the Government on or before September 4, 1937, with leave to the respective parties to file briefs in reply on or before October 1, 1937.

No. 625. JAMES, STATE TAX COMMISSIONER OF WEST VIRGINIA, *v.* DRAVO CONTRACTING CO.;

No. 773. SILAS MASON CO., INC. *ET AL.* *v.* TAX COMMISSIONER OF WASHINGTON *ET AL.*; and

No. 774. RYAN *v.* WASHINGTON *ET AL.* June 1, 1937. These cases are assigned for reargument, with direction to the Clerk to give notice to the Attorney General of the United States who is requested to present the views of the Government upon the question (1) as to jurisdiction over the areas in which the work of the several contractors is being performed, and (2) whether the state tax imposes a burden upon the Government. Briefs may be filed by the Government on or before September 4, 1937, with leave to the respective parties to file briefs in reply on or before October 1, 1937.

No. 910. GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE, *ET AL.* *v.* DAVIS. June 1, 1937. On consideration of the opinion filed in this cause on May 24, 1937, it is ordered that the following amendments be made therein:

1. The last paragraph on page 4, continuing for two lines on page 5, is amended to read as follows: "A petition for certiorari followed. It was filed by the intervening defendants, the Commissioner and the Collector, and brought two questions, and two only, to our notice. We were asked to determine: (1) "Whether the tax imposed

upon employers by Section 804 of the Social Security Act is within the power of Congress under the Constitution," and (2) "whether the validity of the tax imposed upon employees by Section 801 of the Social Security Act is properly in issue in this case, and if it is, whether that tax is within the power of Congress under the Constitution." The defendant corporation gave notice to the Clerk that it joined in the petition but it has taken no part in any subsequent proceedings. A writ of certiorari issued."

2. The words "decree for an injunction" on the ninth line of page 5 are struck out, and the words "equitable remedy" are substituted.

3. In the title of the cause the word "Petitioners" where it now appears is struck out, and inserted following the name of the Edison Electric Illuminating Company of Boston.

Reported as amended, *ante*, p. 619.

DECISIONS GRANTING CERTIORARI, FROM
APRIL 12, 1937, THROUGH JUNE 1, 1937.

No. 787. OCEAN BEACH HEIGHTS, INC. ET AL. *v.* BROWN-CRUMMER INVESTMENT Co. ET AL. April 12, 1937. Petition for writ of certiorari to the Circuit Court of Appeals for the Fifth Circuit granted. *Messrs. J. Julian Southerland, Scott M. Loftin, John P. Stokes, James E. Calkins, and Henry K. Gibson* for petitioners. *Messrs. Giles J. Patterson and Dewey Knight* for respondents. Reported below: 87 F. (2d) 978.

No. 795. UNITED STATES *v.* WILLIAMS. April 26, 1937. Petition for writ of certiorari to the Circuit Court of Appeals for the Seventh Circuit granted. *Solicitor General Reed* for the United States. *Mr. Perry Smith* for respondent. Reported below: 86 F. (2d) 746.